IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

SATURDAY, THE 1ST DECEMBER 2007 / 10TH AGRAHAYANA 1929

WP(C).No. 30904 of 2004(D)

AGAINST THE ORDER IN IA 5657 1998 IN OS.329/1988 of I ADDL.SUB COURT, THRISSUR

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PETITIONER:

RAGHAVAN, C/O.KUNDUVARA,
CHEMBUKKAVU, THIRSSUR.

BY ADV. SRI.P.VIJAYA BHANU
SRI.M.GEORGE THOMAS

RESPONDENTS:

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1. SANKARAN, S/O.PARAKKATTU KESAVAN VYDYAR, VALUSSERY, AVINISSERY, THRISSUR.

2. THANKAMANI @ VALLI, D/O.PARAKKATTU KESAVAN VYDYAR, VALLISSERY, AVINISSERY, THRISSUR.

3. KRISHNANKUTTY, S/O.PERAMANNAN KANDARA, ARIYANNUR, KANDANASSERY, THRISSUR.

4. DEVAKI, W/O.THAMBRAN PADIKKAL PERUMANNAN KRISHNAN, POOKKODE, CHAVAKKAD.

BY ADV. SRI.THIYYANNOOR RAMAKRISHNAN
SRI.ARUN KUMAR.P
SRI.SANDEEP.E.
SMT.P.VIJAYAMMA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO. 30904/2004

APPENDIX

PETITIONER'S EXHIBITS:-

P1: True copy of the Preliminary Decree passed in A.S.No.133/92 dated 27-9-97.

P2: True copy of the compromise petition I.A.No.2862/89 dated 19-9-1989 filed in O.S.No.187/84 dated 19-9-89.

P3: True copy of the objection submitted by the petitioner dated 18-11-99 in O.S.No.329/88 in I.A.No.5657/98

P4: True copy of the commission report and the sketch dated 3-11-02 of the Sub Court, Thrissur.

P5: True copy of the objection in O.S.No.329/88 in I.A.No.5657/98 submitted by the petiitoner.

P6: True copy of the objection submitted by the 1st and 2nd respondent dtd. 4-2-03.

P7: True copy of the order of the Ist Additional Sub Judge, Thrissur dated 22-1-2004 in I.A.5657/98 in O.S.No.329/88

Pius C. Kuriakose, J.

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W.P.(C) No. 30904 of 2004

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Dated this the 1st day of December, 2007

JUDGMENT

Fourth defendant is the writ petitioner and he impugns Ext.P7 order passed by the learned Subordinate Judge on an application filed by the plaintiffs for setting aside the Advocate Commissioner's report. Even though several grounds have been raised, only one ground appeals to me. The ground is that the court below was not correct in overruling the contention of the petitioner that the way which has been provided for accessing plot B should be re-located. It is seen that under the impugned order the above contention is overruled by the learned Subordinate Judge stating as follows:-

> "It is specifically stated in the compromise that the way shall be towards the north of the burial ground. So the advocate commissioner could have accommodated the pathway only in the manner provided by him and I do not think that any modification is required on those aspects."

Ext.P2 is the compromise petition. The relevant paragraph of Ext.P2 is paragraph 3 and the same only says that the pathway should be provided through the land excluding burial ground.

2. In the result, Ext.P7 to the extent it overrules the contentions of the petitioner that the way which has been provided in the Commissioner's report for covering plot No.B should be re-located is set aside and the learned Subordinate Judge is directed to take a fresh decision on the above request of the petitioner at least and at any rate within six weeks of receiving copy of this judgment.

The writ petition is disposed of as above.

Pius C. Kuriakose,
Judge.

mn.